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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of

RULE 26, ARIZ. R. CRIM. P.

AND

RULE 30, R. P. JUV. CT.

Arizona Supreme Court No. ____

**PETITION TO AMEND RULE 26, ARIZ.
R. CRIM. P. AND RULE 30, R. P. JUV. CT.**

PETITION TO AMEND RULE 26, ARIZ. R. CRIM. P. AND RULE 30, R. P. JUV. CT.

Pursuant to Rule 28, Rules of the Supreme Court, the Pima County Attorney, Barbara LaWall, by and through her Deputy, Daniel Jurkowitz, hereby petitions the Court to amend Rule 26 of the Arizona Rules of Criminal Procedure and Rule 30 of the Rules of Procedure for the Juvenile Court, as reflected in the attachment hereto.

I. INTRODUCTION AND PROPOSAL

Upon conviction, A.R.S. §§ 13-603(C) and 13-804 permit a court to enter an order requiring a criminal defendant to provide restitution to an individual who has suffered economic loss from the crime. The statutes, however, are unclear on how or in what form evidence

1 supporting the economic loss shall be provided to the sentencing judge to reach an appropriate
2 amount of restitution. In the juvenile context, the statute is more specific, but still unclear.
3 Section 8-344, A.R.S., requires a court to order a juvenile who has been adjudicated delinquent
4 to provide restitution to a victim of the offense. The court at the dispositional hearing "...may
5 consider a verified statement from the victim..." in determining the amount of damages. A.R.S.
6 § 8-344(B).

7 In practice, a variety of methods have been employed to submit restitution evidence to
8 the court including sworn live testimony, affidavits, and signed declarations under penalty of
9 perjury. As many victims must already deal with trauma associated with the initial injury and
10 the subsequent trial of the defendant, Petitioner would prefer to avoid an additional burden on
11 victims to provide testimony or seek out a notary public to notarize a restitution affidavit for
12 submission to the court. Rather, borrowing from Rule 80(i) of the Arizona Rules of Civil
13 Procedure¹, this petition proposes that restitution evidence be submitted by an unsworn written
14 declaration under penalty of perjury. This proposal will also further a victim's constitutional
15 right to receive prompt restitution. Ariz. Const. art. IX. § 2.1(A)(8).
16

17 Accordingly, it is proposed that Rule 26 of the Arizona Rules of Criminal Procedure be
18 amended to add Rule 26.17 and Rule 30 of the Rules of Procedure for the Juvenile Court be
19 amended to add Rule 30(B)(5) which would permit the use of unsworn written declarations
20 under penalty of perjury to provide the court restitution evidence.

21 **II. CONCLUSION**

22 Petitioner respectfully requests that the Court consider this petition and proposed rule
23 change at its earliest convenience.
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¹ See also Form 5(a), Defendant's Financial Statement. Ariz. R. Crim. P. Rule 41; RFLP Rule 14.

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DATED this _____ day of _____, 2012.

BARBARA LAWALL
PIMA COUNTY ATTORNEY

By: _____
Daniel Jurkowitz
Deputy County Attorney

ATTACHMENT²

ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 26.17 Unsworn Declarations Under Penalty of Perjury

Restitution evidence may be supported, evidenced, established or proved by the unsworn written declaration, certificate, verification, or statement, subscribed by such person as true under penalty of perjury, and dated, in substantially the following form:

“I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
(Signature).”

This rule does not limit the right of the defendant to request a restitution hearing and to cross examine the victim under oath.

RULES OF PROCEDURE FOR THE JUVENILE COURT

Rule 30. Disposition

A. Dispositional Investigation and Report. Prior to the disposition hearing, the court shall order the juvenile probation officer to conduct an investigation and submit a written report to the court with recommendations regarding the disposition of the juvenile.

1. The disposition report shall:

a. Be submitted to the court three (3) days prior to the disposition hearing;

b. Be made available three (3) days prior to the hearing to counsel for the parties or to the parties if unrepresented by counsel;

c. Include a written victim impact statement as required by law;

d. Provide the court with information regarding restitution if restitution is requested; and

² Changes or additions in rule text are indicated by underscoring.

e. Make recommendations as to the most appropriate disposition for the juvenile.

2. Availability of Report to Victim. On request, the court shall provide the victim with the following information contained in the disposition report:

a. The referral history of the juvenile;

b. The probation officer's assessment of the case;

c. The disposition and treatment recommendations;

d. The probation officer's recommendations for treatment and disposition; and

e. The detention history of the juvenile.

3. Waiver of Report. Upon stipulation of the parties and order of the court, the disposition report may be waived if the victim did not provide a written impact statement as provided by law.

4. Evaluation of Juvenile. Prior to the disposition hearing, the court may order that the juvenile submit to a physical, psychiatric and/or psychological evaluation as part of the investigation.

5. Release of Information. Material psychologically damaging to any of the parties or destructive of the relationships between members of the family concerned may, in the discretion of the court, be withheld from any of the parties in question.

B. Disposition Hearing.

1. Time Limits.

a. Detained Juvenile. If the juvenile is detained, the hearing shall be held within thirty (30) days of adjudication of delinquency or incorrigibility.

b. Juvenile Not Detained. If the juvenile is not detained, the hearing shall be held within forty-five (45) days of adjudication of delinquency or incorrigibility.

c. Continuance. Disposition may be deferred or continued on motion of counsel, or on the court's own motion for good cause. If the juvenile is detained, the disposition may not be deferred for more than thirty (30) days after the date initially set for disposition without the juvenile's consent given in open court.

2. Procedure. When the court makes a finding that a juvenile is delinquent or incorrigible, the court shall make a disposition of the matter as provided by law or set the matter for a disposition hearing. The court may assign the matter to another judge or juvenile hearing officer. The victim has the right to be present and address the court at any disposition hearing, as provided by law.

1 **3. Findings and Orders.** At the close of the disposition hearing, the court shall make findings in
2 writing in the form of a minute entry or order. If the disposition is probation, the order shall set
3 forth the conditions of probation.

4 **4. Right to Appeal.** Following the entry of an order by the court, the court shall explain to the
5 juvenile the right to appeal and shall set forth the method of appeal.

6 **5. Unsworn Declarations Under Penalty of Perjury.** Restitution evidence may be supported,
7 evidenced, established or proved by the unsworn written declaration, certificate, verification, or
8 statement, subscribed by such person as true under penalty of perjury, and dated, in substantially
9 the following form:

10 “I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and
11 correct. Executed on (date).
12 (Signature).”

13 This rule does not limit the right of the juvenile to request a restitution hearing and to cross
14 examine the victim under oath.